

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

July 21, 2011

**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

**CONSTANCE M. GOULD,
Claimant Below, Petitioner**

**vs.) No. 100897 (BOR Appeal No. 2043991)
(Claim No. 2006013608)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent**

and

**GLEN DALE UNITED METHODIST CHURCH,
Employer Below, Respondent**

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 15, 2010, in which the Board affirmed an December 17, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's denial of reopening for TTD and medical benefits. The appeal was timely filed by the petitioner and a response was filed by the Glen Dale United Methodist Church. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition, response, and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Office of Judges, in reaching its decision to affirm the claims administrator's denial of reopening for temporary total disability and medical benefits, held Ms. Gould failed to make any showing that the current medical complaints were related to the work-related injury and not the pre-existing disc degenerative disease. (December 17, 2009 Office of Judges Order, p. 4). Ms. Gould asserts the Office of Judges and Board of Review erred in denying her reopening of her claim for temporary total disability and medical benefits when she showed clear medical evidence that her condition worsened and progressed after the date of injury. However, the Glen Dale United Methodist Church asserts Ms. Gould returned to work without restrictions and the medical evidence supports a finding that Ms. Gould suffers from degenerative changes that contribute to her complaints of pain. The Office of Judges noted Ms. Gould returned to work following the injury and worked without restrictions from that time. *Id.* Further, it noted Petitioner's medical records failed to make the necessary showing that her current complaints of back pain were related to the work-related injury and not a result of her severe disc degenerative disease. *Id.* In reaching the conclusion that reopening for temporary total disability and medical benefits is appropriate the OoJ considered the documents and opinions of Drs. Waleed Mansour and Victoria M. Langa to be more persuasive than the report of Dr. David Nully. *Id.*, p. 5. The Office of Judges, too, found no basis for authorization of reopening for temporary total disability and medical benefits, or for disputing the claims administrator's findings. The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of June 15, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the denial of the petitioner's request for reopening for TTD and medical benefits is affirmed.

Affirmed.

ISSUED: July 21, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh